

AO 91 (Rev. 02/09) Criminal Complaint

FILED  
At Albuquerque NM

NOV 03 2009

MATTHEW J. DYKMAN  
CLERKUNITED STATES DISTRICT COURT  
for the

United States of America )

v. )

Case No. )

09-MJ-3156

Nicholous PHILLIPS )

Defendant )

## CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date of 10/03/2009 in the county of Bernalillo in the State and District of New Mexico, the defendant violated 18 U. S. C. § 922(g)(1) and 18 U.S.C. 924(a)(2), an offense described as follows:

The defendant, being a convicted felon did possess a firearm and ammunition; described as a Kahr, model K9, nine millimeter pistol, with an obliterated serial number. The ammunition is described as seven rounds of Winchester 9mm ammunition. Both the firearm and ammunition having previously traveled in interstate or foreign commerce.

This criminal complaint is based on these facts:

☒ Continued on the attached sheet.


Complainant's signature

TRO, ATT

Printed name and title

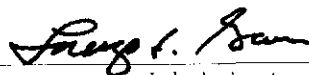
Sworn to before me and signed in my presence.

Date:

Nov. 3, 2009

City and state:

Albuquerque, N.M.



Judge's signature

Luis F. Garcia

Printed name and title

Page 2 of 5 Pages

Criminal Complaint - Continued.

United States of America

V.

Nicholous PHILLIPS

YOB: 1979

SSN: 2061

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On October 3, 2009 Task Force Officer (TFO) Danny Garcia was contacted by Albuquerque Police Department Sergeant George Vega, who told Complainant that at approximately 1:30 a.m. Officer Jerrod Pelot and other officers were dispatched to 635 Red Bluff Southwest Albuquerque, New Mexico in reference to an automobile who had run into the garage door of the residence located at that address.

Also  
Dwelling  
Officer Pelot was advised that the calling party, identified as Adrian Jaramillo had heard the crash, and saw a male subject exit a gold colored vehicle which had run into the garage door and begin walking around the garage.

Mr. Jaramillo advised that the male subject then drove the gold vehicle down the street.

Officer Pelot advised that when the officers arrived and approached the residence, they observed visible damage to the garage door. Officer Pelot advised that the officers also heard noises coming from inside the garage. Officer Pelot stated that he gave verbal commands identifying himself and advising anyone who was inside to exit with their hands visible. Officer Pelot stated that he heard someone from inside the garage state "It's me, I'm sorry I live here." Officer Pelot advised that a male subject matching the description given by the witness as the person driving the gold vehicle exited the garage. Officer Pelot stated that he gave the subject verbal commands to walk toward him with his hands up. Officer Pelot advised that as he gave those commands the male subject immediately began to reach for something in his waistband, and stated "I have a gun." Officer Pelot stated that he grabbed the subject by the arm and turned him around.

2/26  
JDP

Page 3 of 5 Pages

Criminal Complaint - Continued.

United States of America

V.

Nicholous PHILLIPS

YOB: 1979

SSN: 2061

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*As with*  
Officer Pelot stated that he then placed the subject in handcuffs for safety, and removed a black semi automatic handgun from the subject's waistband. Officer Pelot noticed that the handgun, identified as a Kahr Arms, model K9 9mm pistol was loaded with one round of Winchester ammunition in the chamber and six rounds in the magazine. Officer Pelot also noticed that the serial number to the firearm was obliterated.

The subject was identified as Nicholous PHILLIPS, and was read his Constitutional Rights per Miranda, which he stated he understood.

PHILLIPS told the officers that he stays at 635 Red Bluff occasionally, and that Kimberly Martinez is the owner of the residence. PHILLIPS told the Officers that he heard a crash and saw the vehicle in the garage. PHILIPS stated that he jumped into the vehicle, and drove it down the street. PHILLIPS stated that while driving the vehicle, he found the Kahr pistol on the console of the vehicle. PHILLIPS stated that he put the Kahr pistol in his waistband.

Officers could not locate Kimberly Martinez, nor the owner of the vehicle, identified as Elena Ayala.

Phillips was found to have two felony warrants for his arrest.

*OK  
OK*

Page 4 of 5 Pages

Criminal Complaint - Continued.

United States of America

V.

Nicholous PHILLIPS

YOB: 1979

SSN: 2061

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PHILLIPS was arrested on the felony warrants and booked into the Bernalillo County Metropolitan Detention Center.

*Also  
Dunphy*  
Complainant conducted a criminal history query on PHILLIPS. Complainant learned that PHILLIPS criminal history consists of arrests for aggravated assault with a deadly weapon, shooting at or from a motor vehicle, tampering with evidence, possession of a controlled substance, smuggling contraband into a prison, criminal damage to property, receiving and transferring a stolen motor vehicle, trafficking of a controlled substance, receiving a stolen firearm, and conspiracy.

Complainant conducted a query of PHILLIPS on the New Mexico Judiciary website, and learned that on March 13, 2007 PHILLIPS was convicted of the felony crime of aggravated assault with a deadly weapon and tampering with evidence, case number D 202 CR 200602643. Complainant subsequently obtained a certified copy of the judgment for this felony conviction.

Complainant examined the Kahr, model K9, 9mm pistol. Complainant observed that the serial number was partially obliterated, leaving only the numbers 3233. The Kahr pistol was also examined by ATF Senior Special Agent Frank Ortiz, who concurred that the serial number had been obliterated. Complainant test fired the Kahr pistol, which functioned as designed. Complainant examined the Winchester 9mm ammunition. Complainant noted that there were seven rounds of Winchester 9mm ammunition.

*Ball  
JG*

Page 5 of 5Pages

Criminal Complaint - Continued.

United States of America

V.

Nicholous PHILLIPS

YOB: 1979

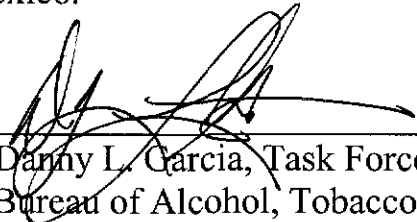
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Through training and experience Complainant knows that Kahr firearms and Winchester ammunition are not manufactured in the state of New Mexico, and therefore had to have traveled in interstate or foreign commerce to be physically present in Albuquerque, Bernalillo County New Mexico on October 3, 2009.

This training and experience has taught Complainant that it is a violation of federal law, specifically 18 U.S.C. 922(g) (1), for a person who is a previously convicted felon to possess a firearm or ammunition.

Therefore Nicholous PHILLIPS was in violation of federal law when as a previously convicted felon, he possessed the Kahr, model K9 9mm pistol, with an obliterated serial number and seven rounds of Winchester ammunition on October 3, 2009 in Albuquerque, Bernalillo County New Mexico.

  
\_\_\_\_\_  
Danny L. Garcia, Task Force Officer  
Bureau of Alcohol, Tobacco, Firearms  
and Explosives

Subscribed and sworn before me this 3rd day of November, 2009.

  
\_\_\_\_\_  
United States Magistrate Judge